IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 6820 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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KANUBHAI LAXMANBHAI PATEL - Appellant(s)
Versus
PRAVINBHAI MOHANBHAI KOLI & 2 - Defendant(s)

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Appearance :
MR RV DESAI for Appellant(s) : 1, 1.2.1, 1.2.2, 1.2.3,1.2.4
RULE SERVED for Defendant(s) : 1 - 2.
MS MEGHA JANI for Defendant(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 29/08/2006

ORAL JUDGMENT

1. By way of this appeal, the appellant has challenged the judgement and order dated 14.07.98 passed by the Motor Accident Claims Tribunal Bhavnagar, in M.A.C.P. No. 15 of 1984 whereby the same was dismissed.

2. The short facts of the case are that on 12.11.1982 the original applicant No. 2 and his mother returned from Ahmedabad by train and got down at Dhola Junction with their goods and luggage, in the early morning of 12.11.1982 to go to their village Ransal. They hired a

vehicle bearing Registration No. G.T.W. 3233. The said vehicle i.e. Matador was driven by original opponent No. 1. At that time the matador dashed with one stationary truck on the road violently. On account of the said accident Ramuben mother of the original applicant No. 2 died on the spot. Therefore the legal heirs of the deceased filed claim petition for compensation in the sum of Rs. 1,00,000/- The Tribunal passed the aforesaid order and the present appeal is for enhancement.

3. Learned counsel for the appellant has contended that the Tribunal has failed to appreciate the object behind enacting Motor Vehicle Act. The Tribunal ought to have considered the case of the appellants sympathetically instead of considering and accepting the technical pleas that were taken by the present respondents. The fact is that the where abouts of truck and owners of truck were not with the appellants and hence they could not be joined as party.

4. Heard learned counsel and gone through the documents placed on record including the award of the Tribunal. While passing the order Tribunal has observed that the party praying for compensation filling petition under the provision of M.V. Act has to prove his case. The original

applicants failed to establish that the vehicle bearing Registration No. G.T.W. 3233 is involved in this incident for the reasons that the original applicant No. 2, in his deposition says that after happening of the incident he left 2 to 3 person who were travelling with him in the tempo at the place and he went to his village to call his relatives. Further original applicant No. 2 who is witness No. 1, is examined at Exh. 52, is also injured but he has not filed any claim for compensation.

Another aspect is that the complaint is not filed by original applicant No. 2 but he narrated the incident to the complainant and the complaint is filed by Patel Labhubhai Manjibhai No iota of evidence is on record with regard to the offending truck. It is also surprising that if 2 vehicles dashed and accident took place, will the drivers be allowed to run away? When the Panchnama of scene of offence is prepared, not a single vehicle was found at the place where the accident took place and surprisingly, panchnama of the vehicle which is said to have been involved in this accident is made on 15.11.1982, while the accident took place on 13.11.1982. during the course of said panchnama on 15.11.1982, which is produced at Exh. 55, damage to the said vehicle is a must. However, there is no iota of evidence with this regard on record. Written statement at Exh. 18 is filed by the owner and signed by the driver and another person

who was not the owner of the vehicle at the relevant time. When the main ingredients namely; involvement of the vehicle and negligence of the driver of the said vehicle is not established, it is not necessary to deal with the question about the quantum of compensation under different heads. Learned Counsel for the appellant is not able to point out anything contrary to take a different view of the matter.

5. In view of the above finding I am of the view that the Tribunal has not committed any error in passing the impugned order. I am in complete agreement with the reasonings adopted and the findings arrived at by the Tribunal. No case is made out to cause interference. Hence the appeal is dismissed. No order as to costs.

(K.S.JHAVERI, J.)

Suresh*